

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

**GMAC MORTGAGE CORPORATION,
Plaintiff**

V.

**JEFFREY L. BAYKO, SR., LISA J. BAYKO,
HELEN E. BAYKO, MICHAEL J. BAYKO,
BANKNORTH GROUP, HANS R. HAILEY,
CHARLES D. ROTONDI,
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE, THE
UNITED STATES OF AMERICA, GARY EVANS,
CHRISTINE ANN FARO, AND JOHN AQUINO,
Defendants**

)
)
) **CIVIL ACTION NO.**
) **04-12448-GAO**
) **(Formerly 2004-01855-B**
) **Essex County Sup. Ct.**
) **Massachusetts)**

**COMMONWEALTH OF MASSACHUSETTS' MOTION TO DISMISS ENTIRE
CASE**

The Commonwealth of Massachusetts Commissioner of Revenue (“Commonwealth”) moves the Court to dismiss this action in its entirety on the following grounds: (1) the Eleventh Amendment to the United States Constitution bars this action against the Commonwealth in this Court and (2) the Commonwealth is an indispensable party to this case. See Cape Ann Savings Bank v. Walter Johnson, U.S. District Court C.A. Nos. 02-10032-GAO and 02-10036-GAO (August 12, 2002) and First Federal Savings Bank of America v. John P. Ward, U.S. District Court C.A. No. 03-10168-GAO (October 7, 2003). (For further discussion see attached Memorandum In Support).

Respectfully submitted,
ALAN L. LEBOVIDGE
COMMISSIONER OF REVENUE
 By his attorneys

THOMAS F. REILLY
MASSACHUSETTS ATTORNEY GENERAL

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Dated:
185028/ERM

CERTIFICATE OF SERVICE

I, Eileen Ryan McAuliffe, hereby certify that I have served copies of the within Certification Pursuant to Rule 7.1(A)(2); the Commonwealth of Massachusetts Motion to Dismiss Entire Case and Memorandum in Support of the Motion on the following parties by first class U.S. mail postage prepaid:

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DATED:
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